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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 715

IN THE MATTER

of

The Petition of REDERI A/S HENNESEID, as Owner of the Motor Vessel "AAKRE," in a cause of exoneration from or limitation of liability.

CHARLES I. WATERMAN, *et al.*,
Petitioners,

v.

Steamship "AAKRE," REDERI A/S HENNESEID, LAMPORT & HOLT LINE, LTD., and CONTINENTAL GRAIN COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

D. ROGER ENGLAR,
T. CATESBY JONES,
F. HERBERT PREM,
Proctors for Charles I. Waterman, et al., Petitioners.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Charles I. Waterman, *et al.*, libelants in an action for loss of and damage to their cargo on board the Norwegian Motorship "Aakre," and claimants in a proceeding for limitation of liability filed by the owner of that vessel, for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, respectfully shows:

Jurisdiction of This Court

This is a proceeding in admiralty which was initiated by libels filed by your petitioners in the United States District Court for the Southern District of New York against the Norwegian Motorship "Aakre," her owners and charterers, for loss of and damage to her cargo while being transported from St. John, New Brunswick, to Buenos Aires, Argentina, by reason of the stranding of the vessel in the Bay of Fundy, during the early morning of October 29, 1937. Thereafter, the owners of the vessel filed a petition for limitation of their liability, and the two proceedings were consolidated by order of court.

This petition seeks a review of the action of the Circuit Court of Appeals for the Second Circuit in affirming, by a divided court, the decree of the United States District Court for the Southern District of New York, dismissing the libels and granting the shipowner complete exoneration from liability in the limitation proceedings. The date of the Order for Mandate, which is the decree sought to be reviewed, is August 16, 1941 (R. 1462).

The jurisdiction of this Court is invoked under Article 3, Section 2, clause 1 of the Constitution of the United States, and under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. Code, Title 28, sec. 347).

Opinions Below

The opinion of the District Court is officially reported as *The Aakre*, 31 F. Supp. 8, and is printed in the record at pages 1370-1405.

The opinion of the Circuit Court of Appeals is not yet officially reported but is unofficially reported in 1941 A. M. C. 1263, and is printed in the record at pages 1443-1462.

Statement of the Matter Involved

The "Aakre" was being operated as a common carrier. The issue as to her liability turned on the question whether the stranding was due solely to errors of navigation or whether unseaworthiness may have contributed to the loss.

As the facts are fully stated in the opinions below, they need only be very briefly summarized here. The "Aakre" sailed from St. John about 9 P. M. on October 28, 1937. The navigators of the vessel laid out a course which, if made good, would have carried her safely out of the Bay of Fundy, the mouth of which is about fifteen miles wide and fifty miles from St. John. After the vessel had proceeded on this course for some thirty miles, her engines were stopped for about three hours to make certain repairs, and during this period the vessel drifted with the current some four miles to the westward. While the engines were stopped the Third Officer, who was then on watch, saw what he believed to be Prim Point Light, which would only be visible from a position very much to the eastward of the vessel's intended course. He reported the matter to the Captain and the Captain sent for the Second Officer, who was permitted under Norwegian law to act also as radio operator. The Second Officer had been asleep but on being called he obtained a radio bearing from St. John, which he correctly entered in the log book, but erroneously laid down on the chart. As stated by the Circuit Court of Appeals:

> "By this error the apparent position of the vessel was shown to be far east of its actual position, and the Third Officer's mistaken report of having sighted Prim Point Light was confirmed. Hence the Captain believed that he was east, instead of west, of his original course, and set the new 2:50 A. M. course accordingly" (R. 1445).

At 3:41 and 3:51 additional radio bearings were obtained which, as laid down on the chart, indicated that the vessel was dangerously near Northwest Ledge, a shoal on

the easterly side of the Bay, near the entrance. In order to avoid this supposed danger, the vessel was headed due West, and some twenty minutes later she stranded on a small island near Grand Manan, which is more than twenty miles from Northwest Ledge and on the opposite (western) side of the Bay of Fundy.

At the time of the stranding and for some hours before, the "Aakre" was surrounded by a dense fog.

The circumstances which led up to the stranding are summed up in the prevailing opinion of the Circuit Court of Appeals as follows:

> "The strange courses steered from 2:50 until 4:00 A. M., and from 4:00 until 4:20 A. M., are explained by the Captain's complete misunderstanding of his position" (R. 1445).

All magnetic compasses, when used on an iron or steel ship, are subject to deviation, which may be different on different headings of the ship and varies from time to time due to changes in the magnetism of the vessel. In order to rely upon his compass, a navigator must have complete and accurate knowledge as to its deviations on all courses.

By Royal Decree issued pursuant to the Norwegian Merchant Shipping Act of July 20, 1893, the "Aakre" was required to have the deviation of her compasses determined by daily observations whenever the weather permitted, and to have these observations recorded in a book kept for that purpose, known as the "compass book" (R. 1124-1126).

The navigators of the "Aakre" had made no attempt to comply with this statute. For some points of the compass the compass book contained no entries at all; for others it contained only one or two entries in the course of a year. Scattered throughout the log-books are entries showing numerous substantial changes in deviation of which there is no indication in the compass book. On the night of the disaster the navigators of the "Aakre" were not using the compass book, but a deviation card prepared some eighteen months before, which showed zero deviation on the course they had set. In reliance on this card they made

no allowance for deviation although the District Court found that there was, in fact, a substantial deviation of the compass which was one of the factors setting the vessel over to the westward (R. 1393).

The Decisions Below

Both of the lower courts accepted the testimony of the master that the information which he had about his compass was "sufficient for safe navigation," although it was not what the statute required either in form or substance. The District Court held that the stranding was due to the error of the Second Mate in laying down the radio bearings from St. John, and therefore dismissed the libels and granted the shipowners complete exoneration in the limitation proceeding. The Circuit Court of Appeals, Judge Frank dissenting, affirmed this decision.

The Issue Presented

This case presents the question what legal consequences flow from the violation of the Norwegian statute, and whether the rule laid down by this Court in *The Pennsylvania,* 19 Wall. U. S. 125, 136, is still law in the Second Circuit. Under that rule a vessel which is involved in an accident while violating a statutory provision intended to prevent such accidents, has the burden of showing not only that the violation probably was not one of the causes of the accident "but that it could not have been." The rule in question, commonly referred to as "the rule in *The Pennsylvania,*" has been cited and followed in more than a hundred reported cases. It has very recently been applied according to its original terms by the Circuit Courts of Appeals for the First and Ninth Circuits. In the very recent case of *The Denali,* 105 F. (2d) 413, 418, the Circuit Court of Appeals for the Ninth Circuit, quoting the language of its previous decision in the case of *The Princess Sophia,* 61 F. (2d) 339, 347, referred to the rule as imposing

a "penalty" on the violator of the statute. We quote from the opinion as follows (p. 418):

> "'Failure to obey a statute does, indeed, penalize the violator. The penalty, however, is not that the violator is to be held accountable for any mishap, regardless of its relation to the violation. The rule simply is that the violator is penalized with the burden of showing that the violation not only probably did not cause the accident, but that it could not have done so. *This burden it is frequently extremely difficult, if not impossible, for the violator to discharge, in the nature of things; and therein lies the true penalty imposed upon him.*'" (Italics in original.)
>
> *The Denali*, 105 F. (2d) 413.

A rehearing was subsequently granted in *The Denali*, but after a full reargument the court adhered to its original decision, filing a supplemental opinion. 112 F. (2d) 952. An application was then made to this Court for a writ of certiorari, which was denied.

> *Alaska Steamship Co.* v. *Pacific Coast Coal Co.*, 311 U. S. 687, 61 S. Ct. 65.

In the present case, however, the Circuit Court of Appeals declined to apply the rule of *The Pennsylvania* and held that the rule, at least as originally stated, is no longer law. The court said:

> "Indeed, however *The Pennsylvania* rule was originally stated, the history of its application shows that it has done no more than shift the burden of proof with regard to causality" (R. 1450).

Judge FRANK filed a dissenting opinion in which he said:

> "My dissent is based largely upon a difference of understanding as to the meaning of the rule laid down in *The Pennsylvania*, 19 Wall. 125, 136: In that, and succeeding cases, the Supreme Court has held that the federal courts, when sitting in admiralty, must regard the violation of a statute designed to prevent accidents as a peculiarly serious transgression" (R. 1452).

Judge FRANK's interpretation of *The Pennsylvania* rule is identical with that which has been adopted and applied uniformly in the other circuits throughout the United States.

In *The Pennsylvania,* this Court said:

> "The liability for damages is upon the ship or ships whose fault caused the injury. But when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been" (p. 136).

The facts in *The Pennsylvania* case were that a sailing vessel navigating in a dense fog was in collision while ringing a bell when by statute she was required to use a fog horn. On behalf of the sailing vessel it was sought to show not only that the use of the bell did not contribute to the collision but that, in fact, a bell was more effective than a horn. On that point this Court said:

> "To go into the inquiry whether the legislature was not in error—whether in fact a bell did not give notice to the steamer that the bark was where she was as soon as a foghorn would have done—is out of place. It would be substituting our judgment for the judgment of the law-making power. It would be admitting the validity of an equivalent for that which the statute has made a positive requirement. Then how can it be shown on the part of the bark that the failure to use a foghorn certainly contributed in no degree to the collision? How can it be proved that if a foghorn had been blown those on board the steamer would not have heard it in season to have enabled them to check their speed or change their course, and thus avoid any collision?" (p. 137).

The principle laid down by this Court in *The Pennsylvania* has been repeatedly reaffirmed in this Court, and

followed in the lower federal courts. Although *The Pennsylvania* was a collision case, the rule which it laid down is not limited to collision cases. *Richelieu & Ontario Nav. Co.* v. *Boston Ins. Co.*, 136 U. S. 408, 422, 423, 10 S. Ct. 934, 34 L. Ed. 398; *The Denali*, 105 F. (2d) 413, 418; 112 F. (2d) 952, 955 to 958. It applies to foreign vessels, including Norwegian vessels. *Lie* v. *San Francisco & Portland S. S. Co.*, 243 U. S. 291, 298.

In accepting the Captain's opinion as against the requirement of the statute, the lower courts did exactly what this Court said it could not do in *The Pennsylvania*, namely, they substituted their own judgment for that of the law-making power.

Moreover, the Circuit Court of Appeals rejected the "Pennsylvania" rule on still another ground, namely, that however the rule may have been originally stated,

> "its application shows that it has done no more than shift the burden of proof with regard to causality" (R. 1450).

In addition to being squarely in conflict with the decisions in the Ninth Circuit to which we have referred, this decision is squarely contrary to numerous decisions of this Court, and to a uniform line of decisions in the other circuits. The statement that the rule of *The Pennsylvania* merely shifts the burden of proof, is contrary to the express language of the rule. The rule is that the shipowner must prove not merely that his fault "probably was not" one of the causes of the disaster, "but that it could not have been." If the shipowner merely has the burden of proof, he sustains it by proving that his fault "probably was not" a contributing cause. Accordingly, the decision of the Circuit Court of Appeals nullifies the entire doctrine. Moreover, a common carrier always has the burden of explaining and excusing the loss of goods entrusted to him. *Clark* v. *Barnwell*, 12 How. 272, 279, 280; *Schnell* v. *The Vallescura*, 293 U. S. 296, 304, 305. As this Court said in the case last cited,

> "The reason for the rule is apparent. He is a bailee entrusted with the shipper's goods, with respect to the care and safe delivery of which the law imposes upon him an extraordinary duty. Discharge of the duty is peculiarly within his control. All the facts and circumstances upon which he may rely to relieve him of that duty are peculiarly within his knowledge and usually unknown to the shipper. In consequence, the law casts upon him the burden of the loss which he cannot explain or, explaining, bring within the exceptional case in which he is relieved from liability" (p. 304).

Hence, as whittled down by the Circuit Court of Appeals, the rule of *The Pennsylvania* adds nothing to the ordinary rules of evidence in cases of cargo damage, and therefore, in effect, disappears as a rule of law.

The present is a case in which the rule of *The Pennsylvania* is of peculiar importance. When no heavenly bodies are visible, the navigators of a vessel can only be guided:

(1) by her compasses,

(2) by the observation of shore lights or other aids to navigation, and

(3) by radio bearings.

The lower courts have found that the lights were erroneously observed by those on the "Aakre," and that the radio bearings were improperly entered on the chart. What of the compasses? If the master had complied with the Norwegian statute and had a compass book which correctly showed the deviations of the compasses on all headings, as contemplated by the statute, how is it possible to say that he would not have accepted his dead reckoning position as correct, in which event he would have passed safely out of the Bay of Fundy? Who can say that if the "Aakre's" navigators had been in possession of complete and accurate deviation data they would not have used it and relied upon it?

In the present case the "Aakre" stranded while violating a statute designed to prevent strandings. Specifically, the statute was designed to keep the master accurately informed of the vessel's position, and the vessel stranded because he was ignorant of her position. Under these circumstances mere proof of other faults which also contributed to his misunderstanding of his position, does not meet the burden imposed by the rule of *The Pennsylvania.*

Judge FRANK's dissenting opinion deals fully with the points mentioned above. He discusses the origin and purpose of the "Pennsylvania" rule and points out that this rule, where it applies, necessarily qualifies the ordinary rules of evidence as to proximate cause. He calls attention to the statement by this Court in *The Pennsylvania* that a shipowner who has failed to comply with a statutory obligation must show that the resulting disaster "was in no degree occasioned by that failure"; and its indication in *The Martello,* 153 U. S. 64, 75, that the shipowner must prove that the statutory violation "could not by any possibility have contributed • • •." We can add nothing to Judge FRANK's discussion of the legal principles involved, and no point would be served by our repeating it in different and probably less appropriate language.

As to the reason for the rule and the importance of it, Judge FRANK has this to say:

> "Cargo has a slim chance at best for it must rely exclusively on the testimony of the ship's officers and crew as to what preceded the casualty; and admiralty courts have often recognized that such witnesses almost invariably will testify on behalf of their ship. See cases collected in Moore, *Facts* (1908) Sections 8, 501, 523, 1021, 1110; *Cf.* Coxe *Admiralty Law,* 8 Col. L. Rev. 172, 181 (1908). Moreover, it is salutary that our courts should do what they can to see to it that legislation like the Norwegian statute is obeyed" (R. 1454).

We believe that the foregoing is but another way of stating what this Court had in mind when it said in *The Pennsylvania,* 19 Wall. 125, 136:

"Such a rule is necessary to enforce obedience to the mandate of the statute."

Reasons for the Allowance of the Writ

1. *The decision in this case creates a square conflict between the Second Circuit and the other federal circuits with respect to the rule of The Pennsylvania which has long been a fundamental rule for the determination of controversies arising out of marine disasters.*

The rule of *The Pennsylvania* has been cited and repeatedly applied not only by this Court but in scores of cases in the lower federal courts, and, until the present case, no doubt has ever been cast on its validity. The present decision abolishes the presumption created by the rule and substitutes a mere burden of proof, which would exist in any event, regardless of any violation of statute. If the present decision is allowed to stand, the law in the Second Circuit will be contrary to the law applied in the other Circuits, as well as contrary to the law as repeatedly laid down by this Court.

We have already cited and quoted from the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *The Denali*. That decision affords a striking example of the confusion which will exist in the admiralty law if the decision of the Circuit Court of Appeals for the Second Circuit in the present case is allowed to stand. Many other cases can be cited to the same effect. The following are a few of the cases in which the "Pennsylvania" rule has been cited and applied by Circuit Courts of Appeals in the same terms in which the rule was originally laid down by this Court:

The First Circuit

General Seafoods Corporation v. *J. S. Packard Dredging Co.*, 120 F. (2d) 117, 120 (decided April 17, 1941).

THE THIRD CIRCUIT

The Duquesne, 262 F. 1, 5. *The Teaser*, 246 F. 219, 222, 223.

THE FOURTH CIRCUIT

The Cyrene, 85 F. (2d) 935, 937. *The City of Baltimore*, 282 F. 490, 493.

THE FIFTH CIRCUIT

Johnson v. *United States*, 4 F. (2d) 102, 103.

THE SIXTH CIRCUIT

Dorrington v. *City of Detroit*, 223 F. 232, 244, 245. *Pittsburgh S. S. Co.* v. *Duluth S. S. Co.*, 222 F. 834, 835, 836.

The rule laid down in *The Pennsylvania* has been cited and applied by this Court in a number of its own later decisions. In *Belden* v. *Chase*, 150 U. S. 674, 699, this Court said:

> "And it is the settled rule in this court that when a vessel has committed a positive breach of statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so. *The Pennsylvania*, 19 Wall. 125, 136; *Richelieu Navigation Co.* v. *Boston Ins. Co.*, 136 U. S. 408, 422."

See also:

> *The Martello*, 153 U. S. 64, 74;
> *Lie* v. *San Francisco & Portland S. S. Co.*, 243 U. S. 291, 298.

We have already referred to this Court's recent denial of an application for a writ of certiorari in the case of

The Denali in which the Circuit Court of Appeals for the Ninth Circuit had applied the rule of *The Pennsylvania* and emphasized the peculiar burden which it imposes. 311 U. S. 687.

2. *The decision in this case will seriously prejudice the rights of persons killed or injured in marine disasters.*

While the present case involved no loss of life, it is important to bear in mind that the presumption laid down in *The Pennsylvania* applies equally to cases of death and personal injury, and is highly important in such cases. The average passenger is just as helpless as a cargo owner ashore, when it comes to combating the evidence of the shipowner's witnesses.

3. *The decision appealed from is an extreme case of judicial legislation, for it accomplishes by judicial decision what the legislative branch of the government has repeatedly declined to do.*

On September 23, 1910 there was signed at Brussels a Convention to govern the liabilities arising out of collisions between seagoing vessels. Article 6 of the Convention reads in part as follows:

> "There shall be no legal presumptions of fault in regard to liability for collision."[1]

This Convention was signed by the American delegates to the Convention with certain reservations, the third of which was as follows:

> "The provisions of Article 6 of said Convention shall not in any way affect legal presumptions created by the laws of the United States."[2]

The Convention has never been ratified by the United States, although efforts to have it ratified have been made from time to time. In January 1938, there were extensive hearings on it before a subcommittee of the Senate Committee on Foreign Relations. As a result of those hearings,

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[1] Senate Document, Executive K, 75th Congress, p. 11.
[2] Ibid., p. 15.

the Committee on Foreign Relations made a report approving the Convention, but making, among others, the same reservation with respect to Article 6 that was made by the delegates to the Brussels Convention.[1]

At the hearings above mentioned, a number of labor unions filed vigorous protests against the ratification of the Convention, directing their criticisms particularly at Article 6.[2] We quote as follows from the memorandum filed by the President of the National Organization of Masters, Mates and Pilots of America:

> "An even more serious objection to the convention arises from article 6 which provides that—
>
> 'There shall be no legal presumptions of fault in regard to liability for collision.'
>
> These words would add tremendously to the difficulty of establishing any claim for personal injury or loss of life arising out of a collision. It is usually impossible to prove with any certainty exactly how a collision occurs between two moving vessels. Most cases are decided on presumptions. These presumptions are based on practical rules which the courts have worked out over a long period of years. The fundamental principle is that if a vessel is shown to have been violating a rule of navigation at the time of the collision, it is presumed that she was guilty of a fault which contributed to the collision. Such presumptions are the greatest aids in simplifying the proofs and enabling the courts to work out a sound practical result. In my opinion a convention which does away with these presumptions will go a long way to deprive seamen and passengers of the benefits which were conferred on them by the recent amendments of the law governing limitation of liability.[3] Such a result would undoubtedly be very

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[1] Executive Report No. 4, 76th Congress, p. 4.

[2] Hearings on Executive K before the Subcommittee of the Committee on Foreign Relations, United States Senate, 75th Congress, 3d session, on January 10, 11, 12, 13 and 14, 1938, pages 439, 440, 444.

[3] Act of August 29th, 1935, c. 804, sec. 1; Title 46 U. S. C., sec. 183 (b).

> desirable from the standpoint of protection and indemnity underwriters, who insure the liability of the shipowners, as in many cases it would enable them to defeat meritorious claims for death and personal injuries merely because of the impossibility of obtaining the necessary proof under the new rules laid down by this convention. I am sure that if this feature of the convention were generally understood, it would arouse a storm of opposition from the American public."

It would indeed be an extraordinary result if the presumption arising from statutory fault, which has been successfully defended before the legislative branch of the government for more than 30 years, were to be abolished by judicial decision in the leading maritime Circuit of the United States,—and without the matter even being passed upon by the court of last resort.

4. *The decision below not only reduces the rule of The Pennsylvania to a mere burden of proof, but permits that burden to be met by evidence contradicting the statute.*

If the rule of *The Pennsylvania* is to be of any value it must not be permitted that witnesses, or even courts, substitute their own judgment for the statutory rule. A presumption so fragile that it can be destroyed by the mere statement of the person at fault that the procedure he followed or the equipment he had, although different from what the statute required, was just as good or even better, would obviously be of no value.

The rule of *The Pennsylvania* is especially important in connection with foreign vessels which are frequently permitted to sail with smaller crews and less adequate equipment than American vessels. The "Aakre" would have been unseaworthy under American law, because the wireless operator also acted as one of the deck officers (R. 676). Norwegian law, however, does not permit navigators to rely merely on radio bearings, but definitely requires them to have certain data by which to determine their position without reference to any aid from the shore. The decision

below permits foreign shipowners to take advantage of those features of their law which relieve them of burdens, and to ignore provisions which impose corresponding obligations.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Circuit commanding that court to certify and send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings of the case numbered and entitled on its docket, No. 17727, October Term, 1940,

"In the Matter

of

The Petition of REDERI A/S HENNESEID, as owner of the Motor Vessel 'AAKRE' in a cause of exoneration from or limitation of liability.

CHARLES I. WATERMAN, *et al.*,
Libellants-Claimants-Appellants,

against

Steamship 'AAKRE' and REDERI A/S HENNESEID, and LAMPORT & HOLT LINE, LTD.,
Respondents-Appellees,

and

CONTINENTAL GRAIN COMPANY, REDERI A/S HENNESEID,
Impleaded-Respondents-Appellees."

and that the decision of the said Circuit Court of Appeals rendered on the 28th day of July, 1941 (R., pp. 1443-1462) and the order entered on the 16th day of August, 1941 (R.,

p. 1462) be reversed and that your petitioners may have such other and further relief in the premises as may be just.

Dated, New York, October 24, 1941.

CHARLES I. WATERMAN, NEIL WATERMAN and EDMUND WATERMAN, copartners, doing business under the firm name and style of E. WATERMAN & Co.; JOS. PELUFFO Y CIA SOCIEDAD ANONIMA; MIGUEL PERSICO, LUIS CASA, FRANCISCO KASA, and FERNANDO MARZIALE, copartners, doing business under the firm name and style of CASA Y PERSICO; ALFREDO PARENTI; NICOLAS DANGIOLA ARCUCCI, ORLANDO DANGIOLA ARCUCCI, SALVADOR MAZZARELLA and MANUEL RICARDO VIGNALE, copartners, doing business under the firm name and style of DANGIOLA ARCUCCI Y CIA, CIA DE PRODUCTOS AGRICOLAS SOCIEDAD ANONIMA; ARTURO IDOYAGE MOLINA; ANTONIO GASPARRI, QUINTO GASPARRI, ENRIQUE GASPARRI, JOSE GASPARRI, EMILIO GASPARRI and ATILIO GASPARRI, copartners, doing business under the firm name and style of GASPARRI HERMANOS; EUGENIO SCUPPA and RAFAEL PASQUALINI, copartners, doing business under the firm name and style of SCUPPA Y PASQUALINI; GENARO CACACE, CARMELO CACACE and JOSE CACACE, copartners, doing business under the firm name and style of GENARO CACACE Y HERMANOS; GINO VUOTTO, MIGUEL VUOTTO and JOSE VUOTTO, copartners, doing business under the firm name and style of GINO VUOTTO E HIJOS; JUAN F. DE MENDONCA NUNES; ANDRES HERMINIO MASSIMINO; VINCENTE CARTABBIA; MIGUEL DI PACE and DOMINGO DI PACE, copartners doing business under the firm name and style of MIGUEL Y DOMINGO DI PACE; MARIANO VIVA and COSTANZO FEDERICO, copartners, doing business under the firm name

and style of VIVA Y FEDERICO; ANGEL RICCI and GUILLERMO RICCI, copartners, doing business under the firm name and style of RICCI HERMANOS; JOSE FERNANDEZ BELAEZ and JESUS MENENDEZ and MARCELINO BELAEZ, copartners, doing business under the firm name and style of FERNANDEZ MENENDEZ Y CIA; LUIS MANGINI; JOSE VIVO; SALVADOR TOSCANO; CASTILLO SPINA, JOSE SPINA, GUERINO SPINA, GENARO SPINA, MIGUEL SPINA and EDUARDO SPINA, copartners, doing business under the firm name and style of SPINA HERMANOS; JUAN JOSE CACACE, ROBERTO CACACE, RODOLFO CACACE, and SUCESION DE SALVADOR CACACE, copartners, doing business under the firm name and style of JUAN CACACE Y HNOS.; MARIO JUAN BAUTISTA COSTANTINI, JUAN BAUTISTA COSTANTINI, CARLOS JUAN BAUTISTA COSTANTINI, JUAN BAUTISTA COSTANTINI, and VITALO JUAN BAUTISTA COSTANTINI, copartners, doing business under the firm name and style of CASA LUIS COSTANTINI HIJOS DE LUIS COSTANTINI; JUAN MOSCARIELLO; and MCCAIN PRODUCE COMPANY, LTD.,

Petitioners,

D. ROGER ENGLAR,
T. CATESBY JONES,
F. HERBERT PREM,
Proctors for Petitioners.

PETITIONER'S

BRIEF

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No.

IN THE MATTER

of

The Petition of REDERI A/S HENNESEID, as Owner of the Motor Vessel "AAKRE," in a cause of exoneration from or limitation of liability.

CHARLES I. WATERMAN, *et al.*,
Petitioners,

v.

Steamship "AAKRE," REDERI A/S HENNESEID, LAMPORT & HOLT LINE, LTD., and CONTINENTAL GRAIN COMPANY,
Respondents.

BRIEF FOR PETITIONERS

The essential facts are stated in the petition.

The contract of transportation was governed by the Canadian Water Carriage of Goods Act (Court's Exhibit 1-A, offered at R. 1073, printed at R. 1320), which was incorporated in the bills of lading, and which, so far as this case is concerned, is identical with the United States Carriage of Goods by Sea Act, 1936: Title 46 U. S. C., Sections 1300-1315. Under these Acts, if the stranding was due solely to negligence in navigation, the carrier is exempt from liability. If, on the other hand, the stranding was caused or contributed to by unseaworthiness of the vessel,

the carrier is liable for the damage to cargo unless it can establish that due diligence to make the vessel seaworthy had been used up to and at the time of sailing.

The obligation to use due diligence to make the vessel seaworthy is non-delegable. *International Navigation Co.* v. *Farr & Bailey Manufacturing Co.*, 181 U. S. 218, 225, 226. *The Farr & Bailey* case arose under the Harter Act, but it has been held both in this country and in the English courts, including the House of Lords, that where the same language is used it will be given the same construction in the later Acts that was placed upon it in the Harter Act.

Spencer Kellogg & Sons v. *Great Lakes Transit Corporation*, 32 F. Supp. 520 (E. D. Mich., S. D.);

Gosse Millerd, Ltd. v. *Canadian Government Merchant Marine* (1929), A. C. 223;

Hourani v. *T. & J. Harrison*, 32 Com. Cas. 305.

POINT I

The decision in the present case is based directly upon the rejection of the rule laid down by this Court in *The Pennsylvania* which has become a basic principle of our maritime law and if the present case is allowed to stand it will create a serious conflict between the law as applied in the Second Circuit and the law as applied in the other circuits.

The importance of the principle involved in the present case is, we believe, sufficiently shown in our petition. We there pointed out, as evidence of the widespread reliance on the rule of *The Pennsylvania* by the federal courts, that this rule has been cited and applied more than a hundred times. Every one of these citations has been examined by one or more of the undersigned counsel, and no case has been found, excepting the present case, in which any doubt has been cast on the interpretation or validity of *The Pennsylvania* rule as originally stated by this Court. Having cited

in our petition the leading cases in six of the circuits, we think that no useful purpose would be served by citing in this brief the scores of additional cases which have applied the rule.

That the Circuit Court of Appeals denied the authority of *The Pennsylvania* rule as originally stated, sufficiently appears from the language of its opinion as quoted in the petition. We shall now point out that the lower court's remarks on this subject were not mere *obiter dicta,* or a mere quibble over terminology. On the contrary, the court's rejection of the rule of *The Pennsylvania* was a controlling factor in its decision. This clearly appears from the findings and conclusions of the courts below.

The Findings and Conclusions of the District Court

The decision of the District Court was devoted largely to issues of fact which are no longer open in this Court. We shall deal only with the findings which are material to the issue raised by this petition.

The District Court found as follows:

> "I find that the cause of the stranding of the 'Aakre' was entirely due to the error of navigation on the part of the second mate in erroneously laying out the bearing which he had received from St. John" (R. 1389).
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> "Accordingly, due to my study of the facts as explained above in this opinion, I hold that the stranding of the 'Aakre' was exclusively due to errors of navigation in the respects above described, and that her stranding not only was not caused or contributed to by any unknown deviation in her compass or any failure, of which her navigators may have been guilty, to record all her compass deviations in her compass book, but, under the facts here shown, could not have been caused thereby" (R. 1401).

Notwithstanding the above findings, the District Court, after pointing out that the vessel had been carried to the westward of her course by the wind and current, found as follows:

> "Furthermore, as I have found that she had an *easterly* deviation not exceeding 3 degrees, that too was setting her to the westward, although her navigator was not conscious of it, because he had started his navigation without allowing for any deviation"* (R. 1393).

This is a definite finding that failure to allow for an existing compass deviation was one of the factors which carried the vessel toward the western side of the Bay, where she went aground. The record affords no explanation of the apparent inconsistency between this finding and the finding that the stranding was due exclusively to the error in laying out the radio bearing. The District Court appears to have taken the view that since the error in laying down the radio bearing was in itself sufficient to put the vessel ashore, all other contributing causes were irrelevant as a matter of law. We shall discuss this question in connection with the opinion of the Circuit Court of Appeals, which appears to have taken the same view. At this time we shall only point out that 3° is admittedly a material deviation (R. 331; R. 919); indeed, the Circuit Court of Appeals found that any deviation in excess of 1° is material (*infra*, p. 23).

The District Court held that the information which the navigators of the "Aakre" had was sufficient, although it was not what the statute required either in form or substance. In other words, the court did exactly what this Court said it could not do in *The Pennsylvania*.

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* This statement as to the effect of easterly deviation is correct. The apparent contradiction arises from the fact that the term "easterly" (or "plus") is applied to all deviation which if not allowed for will cause the vessel to make good a course to the right of her intended course; so that when she is headed on a southerly course, a so-called "easterly" deviation actually carries her to the westward.

The Decision of the Circuit Court of Appeals

The Circuit Court of Appeals did not adopt the finding of the District Court that the stranding was due "exclusively" to the error in laying down the St. John Radio bearing. On the contrary, it found that the Captain was first misled by the supposed sighting of Prim Point Light, and that the radio bearing merely confirmed him in his previous error (*supra*, p. 3). However, the court concurred in the finding of the District Court, that the stranding was due solely to errors of navigation.

As to the necessity for keeping complete and accurate records of compass deviations, and the neglect of this precaution on the "Aakre," the Circuit Court of Appeals said:

> "Appellants argued that logbook entries are practically useless because not easily accessible, and that good practice requires daily observations and regular entries in the compass book, at least of all observations showing as much as one degree's difference from the last recorded observation in the same sector. With this, all the expert witnesses and the court itself seemed to agree; and it is evident that the compass book lacked a record of some observations which it would have had if the practice had been strictly observed" (R. 1447).

As to the effect of the breach of the Norwegian statute, the court said:

> "Since we recognize that the compass book did not contain all the entries which good seamanship required, nothing is added to the argument by the proof of a Norwegian statute enjoining regular entries in the compass book. The materiality of its violation is disproved in exactly the same fashion, and as we have just stated" (R. 1448).

Thus, the court holds that a statute adds nothing to the ordinary requirements of good seamanship; and that the evidence required to disprove the materiality of a viola-

tion is exactly the same, whether the rule violated is statutory or not. This is a flat rejection of the rule laid down by this Court in the case of *The Pennsylvania.*

Dealing specifically with *The Pennsylvania* rule, the court said:

> "Much argument has been devoted to the rule in *The Pennsylvania,* 19 Wall. 125, 86 U. S. 125, 22 L. Ed. 148, which declares it to be incumbent upon a vessel shown to have been guilty of violating a statutory rule of navigation to prove that the violation *could not* have contributed to the ensuing collision" (R. 1450).
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> • • • • • • •
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> "Indeed, however *The Pennsylvania* rule was originally stated, the history of its application shows that it has done no more than shift the burden of proof with regard to causality" (R. 1450).

Having held that *The Pennsylvania* rule merely shifts the burden of proof the Circuit Court of Appeals goes on to say—

> "Still, if it were applied in the strongest sense conceivable, requiring the defaulting vessel to show that the inference of *non sequitur* was not only the most probable, but even the only possible, inference from the facts in evidence, appellants still could not succeed; for every point at issue in the case, including the captain's faith in his compass, was established by direct testimony" (R. 1450-1451).

Taken alone this might appear to be a finding of fact, which this Court would be unwilling to disturb. Elsewhere in the opinion, however, we find that the "direct testimony" to which the court refers is the Captain's own testimony that his information with respect to the compass was adequate, although not what the statute required. Referring to the argument made by these petitioners, the Court said:

> "This argument puts directly into issue the captain's state of mind—his belief in the accuracy of the compass and the sufficiency of the compass data, as well as the fact of the accuracy of the one and the sufficiency of the other. *The captain himself testified that* the Aakre's compass was the best he had ever used, and that *the compass data were 'sufficient for safe navigation'; and the trial court accepted this testimony* not only as true in fact, but also as a true statement of what the captain had always believed. This is a complete answer unless other facts are shown which make the captain's faith absolutely incredible." * (R. 1448).

It would be difficult to conceive a more complete negation of *The Pennsylvania* rule than appears in the foregoing quotation. Having admittedly violated the requirements of the Norwegian statute, which were designed to insure his accurate knowledge of his position, and having put his vessel ashore admittedly because he was ignorant of his position, the Captain says that the knowledge which he had, although not what the statute required, was "sufficient for safe navigation" and, therefore, his violation could not have contributed to the disaster; and the court accepts this testimony as sufficient to overcome the burden imposed by the rule of *The Pennsylvania.* Obviously nothing is left of *The Pennsylvania* rule if it can be met by such testimony. The danger of such evasion of the rule was clearly foreseen and guarded against by this Court when it declined to accept evidence to show "the validity of an equivalent for that which the statute has made a positive requirement" (*supra,* p. 7).

During the fifteen months preceding the disaster the compass book of the "Aakre" showed only one entry of deviation on the course on which she left St. John. The master of the vessel and the shipowner's expert both agreed that one such entry was not an adequate guide to the deviation of the compass (R. 656, 657, 879), and the District

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* Italics ours.

Court made no finding on the subject. Nevertheless the Circuit Court of Appeals held that—

> "Since the compass book carried the particular entry necessary for this occasion, even a fairly general deficiency in the records could not have been material to the stranding" (R. 1447).

Under ordinary circumstances the Circuit Court of Appeals might have power to substitute its own judgment for the judgment of the expert witnesses—even where, as here, their testimony is unanimous and is contrary to the interest of their employer. In the present case, however, where a statutory violation is involved and the rule of *The Pennsylvania* applies, the court is substituting its own judgment not for that of experts, but for that of the Norwegian government. In view of the fact that the statute required complete and accurate records, it is not permissible for the court or anyone else to hold that "even a fairly general deficiency" in the records which the statute required "*could not* have been material to the stranding." In doing so the court did precisely what this Court held in the cases of *The Pennsylvania* and *The Martello* it had no right to do, *i .e.,* substitute its own judgment for that of the law-making power.

The court then goes on to say:

> "Furthermore, it is a sufficient answer to this charge, as to the former, that no possible error in the ship's course before the period of drifting could have affected her navigation afterwards, *and that three degrees' difference in her course after 2:45 A. M. would not have saved her from the effects of the captain's misconception of his position*"* (R. 1447-1448).

As appears from this passage in its opinion the Circuit Court of Appeals, like the District Court, took the view that even the unknown 3° deviation—which admittedly

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* Italics ours.

was one of the factors setting the vessel toward the western side of the Bay where she eventually went ashore, would not render the shipowner liable *unless this factor was sufficient to produce the stranding independently of any other factors involved.* We submit that this view is clearly unsound as a matter of law.

Where it appears that a fault has contributed to an accident, the injured party need not prove that in the absence of this fault the accident would not have occurred. Surely, a shipowner subject to the rule of *The Pennsylvania,* cannot dispose of a statutory fault which admittedly contributed to a disaster, merely by proving that he committed other very serious faults which would probably have caused the accident in any case.*

Throughout the opinion of the Circuit Court of Appeals it is apparent that the rule of *The Pennsylvania* was given no effect whatever. A striking illustration of this appears in the footnote on page 1449 of the Record, where the court recognizes the inconsistency in the Captain's testimony and says:

> "But on the trial there was no attempt to elicit a rationalization, of which he may have had several; and the matter, therefore, stood on his quite erroneous assumption."

The only meaning we can attach to this statement is that these petitioners are penalized because they did not attempt at the trial to elicit from the master some rationalization of his testimony. We submit that where *The Pennsylvania* rule applies, any inconsistency in the shipowner's evidence should be resolved against him rather than against the owners of cargo.

In connection with the language above quoted from the opinion in the present case, where the rule of *The Penn-*

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* Cf. this Court's requirement of proof that the violation "certainly contributed *in no degree*" (*supra,* p. 7). Italics ours.

sylvania was rejected, we call attention to the following passage from the opinion of the Circuit Court of Appeals for the Ninth Circuit in the case of *The Denali*, where the rule was applied:

> "The purpose of limiting the mates' watches is to avoid fatigue, and the burden is on the owner to show that the 4 hour excess of effort in violation of the statute *could not* have contributed to the miscalculation in the hour of anxiety and strain which brought the vessel's destruction.
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> With this difficult burden of proof on the Steamship Company, it offers no testimony at all on the general health and surviving physical vigor of Obert, well past his middle age. More significant, the Steamship Company did not ask Obert, its own witness, nor did he testify, whether or not he felt fatigued from his 12 hours of service as both pilot and mate in the preceding 24 hours—*significant because every admiralty lawyer knows the heavy burden on his owner-client where a statutory command is violated in the navigation of its vessel*" (105 F. (2d) 413, 419)*

The contrast between these two opinions affords a good illustration of the confusion which will result if the decision in the present case is allowed to stand.

POINT II

The dissenting opinion of Judge Frank correctly interprets and applies the rule of *The Pennsylvania*.

In the preceding point we have dealt with this case on the basis of the actual finding that 3° of unknown deviation was a contributing factor in putting the "Aakre" ashore. We submit that this finding is sufficient to dispose of the case. Wholly apart from this specific finding, however, the rule of *The Pennsylvania* requires that the decision of the Circuit Court of Appeals be reversed.

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* Italics in first paragraph are in original opinion; italics in second paragraph are ours.

Although, as Judge FRANK points out (R. 1459), the Captain knew that the general set of the current was to the westward, the first radio bearing, as plotted by the Second Mate, indicated that the vessel was some eight miles to the eastward of her proper course, and more than thirteen miles eastward of her actual position (Exhibit J, U. S. Navy Chart, offered at R. 315; the chart is not reproduced in the Record but will be submitted to this Court pursuant to stipulation, R. 1432, 1435; R. 309, 310, 316, 317). The radio bearings taken at 3:41 and 3:51 as laid out by the Second Mate, showed the vessel more than twenty miles from her actual position. It is important to bear in mind that all of these radio bearings *were properly entered in the logbook,* although erroneously plotted on the chart. Therefore, all the Captain needed to do in order to discover and correct the Second Mate's error, was to compare the entry in the logbook with the bearing actually plotted on the chart. The error was so large (upwards of 20°, nearly 2 points) that it would have been obvious to any experienced navigator. Nevertheless the Captain accepted and acted upon the assumption that his vessel was many miles to the eastward of the course he had set, although the forces external to the vessel were setting her to the westward.

As Judge FRANK points out—

> "Even if the master had been only an amateur navigator, yet, looking at the course as originally charted by compass, and knowing that the drift was westward, he would have been shocked at the position shown according to the second mate's recording of the radio bearing—provided the master believed that the course originally charted by compass was reliable. Had he been thus shocked, he would have called for an explanation of the radio bearing as recorded. The result would have been that the second mate's error would have been detected—and the stranding would not have occurred. The violation of the statute is thus in the factual causal chain; and it could 'possibly have contributed' to the stranding" (R. 1457).

We shall not repeat Judge FRANK's reasoning, which is fully set forth in his opinion. We believe that there is no escape from the conclusion which he reaches, if the rule of *The Pennsylvania* is still law.

Where a vessel encounters disaster while violating a statute designed to prevent such disasters, we believe that the burden imposed by the rule of *The Pennsylvania* can be met in only one way, *i. e.*, by showing that the object of the statute was accomplished. For example, if the navigators of the "Aakre" had been using an accurate gyroscopic compass (which is not subject to deviation) they could properly argue that their violation of the Norwegian statute had not contributed to the disaster; for the purpose of the statute was to keep them accurately informed as to the ship's course, and they would have been accurately informed, although not in the manner contemplated by the statute. In the present case, however, where the disaster admittedly arose from "the Captain's complete misunderstanding of his position" (*supra*, p. 4), we submit that the shipowner may not shield himself behind the argument that the information which the statute required the Captain to have for his assistance in determining his position, would have been of no value. To say this is to contradict the statute, which this Court has said the shipowner may not do.

The majority of the court accepted the Captain's testimony that he considered his information about the compass "sufficient for safe navigation", and held that this testimony disposed of the argument that the Captain did not have confidence in his compass. We submit that such testimony is irrelevant; the courts cannot receive the judgment of an individual navigator as against the judgment of the law-making power. Moreover, the Captain's general statement that his compass data was sufficient for safe navigation must be read in connection with his frank statement that he would not attempt to proceed down the Bay of Fundy in fog without other aids to navigation in addition to his compass (R. 1032, 1033). It is clear from the

Captain's testimony that he considered his compass data sufficient only when supplemented by other sources of information such as shore lights, radio bearings, observations, etc. The requirement of the statute, however, is subject to no such qualification.

This Court has repeatedly recognized the importance of legislative provisions designed to promote safety at sea. In this connection we refer to the language used by this Court in *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364, 368, 369. As there pointed out, a meticulous observance of statutory requirements may seem over-exacting while a vessel is navigating safely under normal conditions. These requirements, however, are intended for the protection of the ship and her company in time of emergency or peril; and when a ship meets disaster while violating a statutory regulation designed for her greater safety, every inference should be drawn against her.

"Such a rule is necessary to enforce obedience to the mandate of the statute." *The Pennsylvania*, 19 Wall. 125, 136.

POINT III

The decision below involves an exercise of legislative power for it changes the law of the United States to bring it more nearly into agreement with the law of Great Britain contrary to the clearly indicated intent of the Congress.

The rule of *The Pennsylvania* is a rule of evidence which does not affect the substantive rights of the parties. *The Denali, supra*, page 6. The courts of the United States apply this rule to the navigation of foreign vessels on the high seas.* In *Lie* v. *San Francisco & Portland S. S. Co.*, 243 U. S. 291, 298, the rule was applied to a violation of an

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* The waters of the Bay of Fundy more than three miles from shore are international waters and form part of the high seas (R. 495).

international convention by a Norwegian vessel on the high seas. In *Richelieu & Ontario Navigation Co.* v. *Boston Marine Insurance Co.*, 136 U. S. 408, 422, 423, the rule was applied to a violation of a Canadian statute by a Canadian vessel while navigating Canadian waters.

It was argued in the courts below that the rule of *The Pennsylvania* applies only in collision cases, but the *Richelieu & Ontario Navigation Co.* case and *The Denali*, 105 F. (2d) 413, 418, were both stranding cases; and in the latter case the authorities are fully reviewed and discussed in the opinion rendered by the Circuit Court of Appeals for the Ninth Circuit after reargument. 112 F. (2d) 952, 955 to 958.

In this connection it should be borne in mind that the present is a case in which a foreign shipowner has applied to our courts for limitation of its liability, thereby subjecting itself to our system of law, at least so far as remedies are concerned. This point is very strongly brought out by the opinion of this Court in the case of *The Titanic*, 233 U. S. 718, 732.

By reason of the fact that the rule of *The Pennsylvania* is applied in our courts to foreign vessels it is a matter of interest to shipowners abroad. In our petition we refer to the Brussels Convention of 1910, in which it was sought to abolish all legal presumptions of fault in collision cases. The United States Government has never ratified this Convention and the only Senatorial Committee which recommended its ratification coupled this recommendation with the same reservation made by the American delegates to the Brussels Convention, *i. e.*,

> "that the provisions of Article 6 of the Convention shall not in any way affect legal presumptions created by the laws of the United States."

The 1910 Convention has been ratified by the United Kingdom of Great Britain and Northern Ireland, and in the lower courts counsel for the shipowners cited a number of

English collision cases in support of their position. The English cases, however, rest squarely on the Maritime Conventions Act of 1911, by which the British government adopted and put into effect the principles of the Brussels Convention of 1910. Mardsen's Collisions at Sea (9th Edition) page 65; *The Heranger*, 1939 A. C. 94, 104.

But quite apart from the fact that the present British rule as to collisions is statutory, we call attention to the fact that Great Britain has always been primarily a carrier nation, and that the British law has always been more favorable to carriers than the law of the United States. *Railroad Co.* v. *Lockwood*, 17 Wall. U. S. 357, 373; *Knott* v. *Botany Mills*, 179 U. S. 69, 71; *Liverpool Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397, 447.

In the petition we referred to the extended hearings on the Brussels Convention which were held in January, 1938. At those hearings the then head of the firm which represents the owners of the "Aakre" in this litigation, appeared in support of the Convention, acting on behalf of British and Scandanavian underwriters who insure the liability of shipowners.[1] Counsel for these petitioners appeared at the hearings in opposition to the Convention. One of the points most actively discussed was the rule of *The Pennsylvania*. Mr. J. Frank Staley appeared for the Department of Justice and, in the course of his testimony, he made the following statement:

> "Mr. Staley. The convention uses the expression 'Legal presumptions,' and it has been assumed all through it that the rule of the *Pennsylvania* would be classed as a legal presumption, and it being so classed that it would do away with it. If it is not classed as a legal presumption, then the situation may be different."[2]

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[1] Hearings on Executive K (cited in Footnote on page 14, *supra*) at pages 112, 113.

[2] Ib. page 312.

After the hearings the Senate Committee on Foreign Relations recommended that existing presumptions under American law be retained. What foreign interests could not obtain from the Senate they have now obtained from the Circuit Court of Appeals for the Second Circuit—*i. e.*, the abolition of the rule of *The Pennsylvania*.

We submit that if the United States are to adopt the principle of the Brussels Convention, and even extend it to cases other than collisions, they should do so by action of the United States Senate, after a full public hearing, and not by a court decision which abrogates, in one circuit only, a rule of evidence which has been consistently followed throughout the country for more than two generations.

CONCLUSION

Because the decision of the Circuit Court of Appeals is in direct conflict with the decisions of this Court and the Circuit Courts of Appeals for the First, Third, Fourth, Fifth, Sixth and Ninth Circuits; and because the decision affects an important principle of maritime law which has become a fundamental rule for the determination of controversies arising out of marine disasters, we respectfully submit that a writ of certiorari should be granted in order that the question presented herein may be definitely decided and the uniformity of the admiralty law restored.

Dated, New York, October 24, 1941.

Respectfully submitted,

D. Roger Englar,
T. Catesby Jones,
F. Herbert Prem,
Proctors for Petitioners.